STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Court of Appeals
(Sawyer, P.J., and Murphy and Ronayne Krause, JJ)

Jessica A. Dillon,

Plaintiff/Appellee,

v.

State Farm Mutual Automobile Insurance Company,

Defendant/Appellant.

Supreme Court Docket 153936

Court of Appeals Docket 324902
Isabella County Circuit 12-10464-NF

Patrick A. Richards (P51373)
Daniel A. Iacco (P31658)
GRAY, SOWLE & IACCO PC
Attorneys for Plaintiff/Appellee
1985 Ashland Drive, Suite A
Mt. Pleasant, MI 48858
(989) 772-5932

Liisa R. Speaker (P65728)
Jennifer M. Alberts (P80127)
SPEAKER LAW FIRM, PLLC
Attorneys for Amicus Curiae
Coalition Protecting Auto No Fault
230 N. Sycamore Street
Lansing, MI, 48933
(517) 482-8933
lspeaker@speakerlaw.com
jalberts@speakerlaw.com

Paul D. Hudson (P69844)
MILLER, CANFILED, PADDOCK AND STONE, PLC
Attorney for Defendant/Appellant
277 S. Rose Street, Suite 5000
Kalamazoo, MI 49007
(269) 381-7030
hudson@millercanfield.com

John P. Lewis (P49360)
HACKNEY GROVER PLC
Attorney for Defendant/Appellant
3514 Rivertown Point Ct SW, Ste B
Grandville, MI 49418
(616) 257-3900
jplewis@hghblaw.com

George T. Sinas (P25643)
SINAS DRAMIS BRAKE BOUGHTON & MCINTYRE PC
Co-Counsel for Amicus Curiae
3380 Pinetree Rd
Lansing, MI 48911
(517) 394-7500
georgesinas@sinasdramis.com

AMICUS CURIAE BRIEF OF THE COALITION PROTECTING AUTO NO-FAULT

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases:

Statutes and Court Rules:

Other Authorities:

STATEMENT OF QUESTION PRESENTED

1. Does MCL 500.3145(1), by its plain language, and as intended by the Legislature, require only general notice of injury to the insurer, and not a specific identification of every single particularized injury for which the insured may eventually need to claim benefits?

Circuit Court answered:	Yes.
Court of Appeals answered:	Yes.
Appellant answers:	No.
Appellee answers:	Yes.
Amicus Curiae CPAN answers:	Yes.

STATEMENT OF INTEREST OF AMICUS CURIAE CPAN

CPAN is a broad-based coalition formed to preserve the integrity of Michigan's model no-fault automobile insurance system. The central mission of CPAN is to protect and preserve the vitality of the Michigan auto no-fault insurance system so that it continues to provide comprehensive coverage and meaningful protections for Michigan citizens injured in motor vehicle collisions.

CPAN consists of seventeen major medical groups and seven consumer organizations. CPAN's member organizations are identified below:

CPAN: Coalition Protecting Auto No-Fault	
Medical Provider Groups	**Consumer Organizations**
1. *Michigan Academy of Physician Assistants*	1. *Brain Injury Association of Michigan*
2. *Michigan Assisted Living Association*	2. *Michigan Association for Justice*

3. *Michigan Association of Chiropractors*	3. *Michigan Paralyzed Veterans of America*
4. *Michigan Brain Injury Provider Council*	4. *Michigan Protection and Advocacy*
5. *Michigan Association of Home Care*	5. *Michigan Disability Rights Coalition*
6. *Michigan Nurses Association*	6. *Michigan Senior Advocacy Council*
7. *Michigan Orthopaedic Society*	7. *Michigan Guardian Association*
8. *Michigan Orthotics and Prosthetics Association*	
9. *Michigan Osteopathic Association*	
10. *Michigan Rehabilitation Association*	
11. *Michigan Society of Oral and Maxillofacial Surgeons*	
12. *Michigan State Medical Society*	
13. *Michigan Dental Association*	
14. *Michigan Association of Neurological Surgeons*	
15. *Michigan Independent Case Management Council*	
16. *Michigan Committee on Trauma*	
17. *Michigan Podiatric Medical Association*	

It is CPAN's fervent belief that Michigan's auto no-fault insurance system cannot survive unless the Michigan Appellate Courts interpret the No- Fault Act as the Legislature intended, and do not add requirements to the recovery of benefits that were not written into the statute by the Legislature. This includes applying the plain language of the notice provision contained in MCL 500.3145.

The goal of the Michigan No-Fault Act is to assure the prompt payment of a broad scope of medical and rehabilitation expenses, which enables accident victims to obtain the best recovery and the highest quality of life possible. Central to the attainment of this goal is the relatively simple and unburdensome notice requirement, which individuals may satisfy without consulting an attorney and without any legal or medical expertise. This Court's interpretation of that requirement will determine whether it continues to be simple and unburdensome, as the Legislature intended, or whether it will impose further hassle upon claimants, necessitating more attorney involvement and litigation in the future.

INTRODUCTION

The goal of the No-Fault Act is "to provide victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses." *Shavers v Attorney General*, 402 Mich 554, 578-579; 267 NW2d 72 (1978). The act was intended to reduce litigation by making it easy for an insured to bring a claim to their insurer, and have it paid, without any involvement of attorneys. In crafting the notice requirement of MCL 500.3145(1), the Legislature intended to keep it simple. It required only "notice of injury," which includes that the claimant "indicate in ordinary language the . . . nature of his injury." MCL 500.3145(1). The Legislature did not require specificity, and could have used more specific terms if it wished, as it has done in other statutes. Indeed, this Court has recently held with respect to this very provision that courts may not add requirements to the notice that do not exist. *Perkovic v Zurich American Insurance Company*, ___ Mich ___; ___ NW2d ___ (2017). This Court should affirm the Court of Appeals' decision, requiring

only a general indication of injury, rather than a specific identification of each individual injury suffered, and not add in a requirement the Legislature neither intended nor wrote into the statute.

STATEMENT OF FACTS

Plaintiff was injured when she was struck by an automobile in 2008. *Dillon v State Farm Mut Auto Ins Co*, 315 Mich App 339, 340; 889 NW2d 720 (2016). She initially complained of upper and lower back pain and various abrasions. *Id.* No significant injuries were noted after various imaging studies. *Id.* When Plaintiff contacted Defendant, her insurer, she informed them of injuries to her lower back and left shoulder, and various abrasions. *Id.* She did not specify that she also had an injury to her left hip. *Id.*

In 2011 and 2012, Plaintiff sought treatment for hip pain and underwent physical therapy to relieve the pain. *Id.* In 2012, Plaintiff was diagnosed with a left anterosuperior quadrant labral tear and detachment. *Id.* at 341. Her doctor testified that the torn hip labrum arose out of the 2008 car accident. (Appellee's Answer to Appellant's Application for Leave to Appeal, p. 8). Plaintiff underwent surgery to treat the problem. *Dillon*, 315 Mich App at 341. When Plaintiff sought payment for her expenses, Defendant denied the claim on the basis that she never provided notice of a hip injury within one year of the accident. *Id.*

The Trial Court denied summary disposition to Defendant, and a jury found in Plaintiff's favor. *Id.* Defendant appealed, and the Court of Appeals affirmed. *Id.* Defendant now appeals to this Court.

ARGUMENT

I. By using the phrase "notice of injury," the Legislature intended for the notice requirement of MCL 500.3145 to be unburdensome and easy for an individual to satisfy by simply notifying the insurance company that he or she was injured.

The primary goal of statutory interpretation is to give effect to the intent of the Legislature. *Ameritech Mich v PSC*, 460 Mich 396, 411; 596 NW2d 164 (1999). The first step in that determination is to review the language of the statute itself. *Id.* If the statute is unambiguous on its face, the Legislature will be presumed to have intended the meaning expressed, and judicial construction is neither required nor permissible. *Id.* Should a statute be ambiguous on its face, however, so that reasonable minds could differ with respect to its meaning, judicial construction is appropriate to determine the meaning. *Id.*

The goal of the No-Fault Act is "to provide victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses." *Shavers v Attorney General*, 402 Mich 554, 578-579; 267 NW2d 72 (1978). The act was intended to reduce litigation by making it easy for an insured to bring a claim to their insurer, and have it paid, without any involvement of attorneys. *Johnson v State Farm Mut Auto Ins Co*, 183 Mich App 752, 763; 455 NW2d 420 (1990), overruled on other grounds by *Devillers v Auto Club Ins Ass'n*, 473 Mich 562; 702 NW2d 539 (2005).

In order to achieve this goal, the Legislature made it simple for the person who has suffered an accidental bodily injury in an automobile accident to provide a "notice of injury" to the insurance carrier. The Legislature did not intend to make the notice requirement unnecessarily burdensome or difficult for the injured person, but simply to inform the insurer "in ordinary language" of the "name of the person injured and the time, place and

nature of his injury." MCL 500.3145(1). The Legislature did not require the injured person to identify with specificity each of the particularized injuries that arose from the motor vehicle accident.

To that end, MCL 500.3145 provides,

> (1) An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written **notice of injury** as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. The **notice of injury** required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate **in ordinary language** the name of the person injured and the time, place and **nature of his injury**.

MCL 500.3145(1) (emphasis added).

Amicus CPAN draws this Court's attention to a phrase the Legislature carefully included within this subsection: that the notice shall be given "in ordinary language." MCL 500.3145(1). "Ordinary" is defined by Black's Law Dictionary as "occurring in the regular course of events; normal; usual." Black's Law Dictionary (9th ed.). The Legislature's decision to include that the notice may be given "in ordinary language" indicates its intent that the notice be basic, general, and simple. Ultimately, the statute is designed to protect the insured who may be attempting to preserve his or her claim without needing the

assistance of counsel or needing to predict every medical condition or injury that may ever be diagnosed in relation to the motor vehicle accident. It is intended to **not** be burdensome to such an individual.

In this regard, the Court in *Johnson* stated, "The statutory requirement of a notice of injury serves to put the insurance company on notice that a loss has occurred and to provide the company with **basic** information concerning the loss: namely, the name of the person who suffered the loss and the time, place and nature of the injury." *Johnson*, 183 Mich App at 758 (emphasis added). Notice of injury "**simply** informs the insurer of 'the name and address of the claimant,' 'the name of the person injured and the time, place and nature of his injury.'" *Welton v Carriers Ins Co*, 421 Mich 571, 579; 365 NW2d 170 (1985) (emphasis added), overruled on other grounds by *Devillers v Auto Club Ins Ass'n*, 473 Mich 562; 702 NW2d 539 (2005).

Indeed, the Court of Appeals in the present case noted the Legislature's use of the phrase "notice of injury" rather than "notice of *the* injury." *Dillon v State Farm Mut Auto Ins Co*, 315 Mich App 339, 344; 889 NW2d 720 (2016). As the Court explained, the latter would denote that notice is to be given for a particular injury, whereas the former—the phrase the Legislature actually chose to use—denotes that notice need only be given of the fact of injury. *Id.* The Court of Appeals also considered the last sentence of MCL 500.3145, requiring notice of the "nature of [the plaintiff's] injury." *Id.* at 344-345. Noting that "nature" means "a kind or class [usually] distinguished by fundamental or essential characteristics," the Court concluded that a plaintiff provides notice of the "nature of his injury" when he notifies the insurer that he suffered *physical* injuries. *Id.* These phrases

indicate that a provision of **general** notice is required—there is no requirement of specificity.

Consistent with the Legislature's decision to keep the notice requirement simple and general, the No-Fault statute protects the insurer in ways other than the required notice, such as by allowing the insurer to investigate and obtain more information about the injuries sustained. For example, "[w]hen the mental or physical condition of a person is material to a claim that has been or may be made for past or future personal protection insurance benefits," an insurer may require the insured to submit to mental or physical examination by physicians. MCL 500.3151. The insurer is entitled to written reports concerning any relevant examination performed, and information regarding diagnoses and treatment of the injury or any relevant past injury. MCL 500.3152. The statute also includes penalties for failing to comply with these provisions. MCL 500.3153. Thus, in this way, the Legislature provided ample means for the insurer to obtain the information it requires to defend a case, without imposing a greater burden on the plaintiff when it comes to notice of injury.

Adhering to the plain language of the statute, this Court recently reversed the Court of Appeals in another notice case for adding an unwritten requirement to the notice provision of MCL 500.3145(1). In *Perkovic v Zurich American Insurance Company*, ___ Mich ___; ___ NW2d ___ (2017), this Court considered the Court of Appeals' holding that a plaintiff's notice was insufficient simply because the notice did not evince an intent to make a claim for PIP benefits—a requirement completely absent from the statutory provision. *Perkovic*, slip op. at 7. This Court reversed the Court of Appeals and held that the notice provision does not "require language explicitly indicating a possible claim for

benefits. The Legislature could have elected to include such language, but did not." *Id.* at 8. This Court concluded that adding a requirement that the notice indicate a claim for benefits would be contrary to the plain language of the statute. *Id.* at 8.

Similarly, here, the Legislature chose not to require specificity when it used language requiring only a general "notice of injury." The Legislature could have elected to require more specificity, but it did not. To add a requirement of specificity where none exists would be contrary to the plain language of the statute.

II. By using the phrase "notice of injury," the Legislature intended to avoid the denial of coverage due to undiagnosed injuries, which would be directly contrary to the purpose of the No-Fault system.

Undiagnosed injuries are a problem for many car accident victims. A claimant may easily be able to notify an insurance company that he or she is injured, but may not know the extent of the injury, or which specific parts of his or her body are actually affected. The claimant may simply know that he or she feels sore or that he or she is suffering from a variety of other symptoms, but be unable to distinguish between back injury and hip injury, or between neck or spinal injury and brain injury. Some injuries may simply be undetectable at an early stage. Others may produce symptoms, but the symptoms are attributed to some other injury.

For example, brain injuries are common after car accidents, and they sometimes occur even when there is no head impact. Bellevue Pain Institute, *Auto Accidents*, https://www.bellevuepaininstitute.com/auto-accidents/. A claimant often does not recognize the injury, and it goes undiagnosed. *Id.* This may lead to a failure to report the existence

of the specific injury to an insurer, although the claimant reports what he or she knows—that he or she *was* injured in an automobile accident. Likewise, many car accident victims suffer from whiplash due to injuries that are difficult to precisely pinpoint. *Id.* Symptoms may overlap with the symptoms of different injuries, such as concussions, and it can be difficult to distinguish between spinal injury and brain injury. *Id.* A third example occurs in patients with traumatic aortic injuries, which sometimes go unrecognized until a chronic traumatic aortic aneurysm is detected. Sarah Miller, Prashant Kumar, Rene Van den Bosch, and Adib Khanafer, Case Report, *Chronic Thoracic Aortic Aneurysm Presenting 29 Years Following Trauma*, Case Reports in Surgery (2015). Surgical intervention may be required to prevent rupture at a later date, which may be fatal. *Id.* These are only a few examples of many medical conditions that may arise from automobile accidents and not be immediately diagnosed.

The Court of Appeals has recognized the impossibility of reporting the existence of problems that have not yet developed, but which arose out of an auto accident. In *Anthony v Citizens Insurance Company*, unpublished per curiam opinion of the Court of Appeals, issued October 19, 2006 (Docket No. 270000), at 1, the plaintiff injured her ankle and leg in an automobile accident in 1993. In 2005, the plaintiff's condition had worsened, she struggled to walk without falling, and she required 24-hour attendant care. *Id.* The defendant argued she could not claim benefits based on her inability to walk because she never provided notice of that condition within a year of the accident, even though she had provided notice of injury to her ankle and leg. *Id.* at 3. The Court noted that "Defendant's interpretation requires prognostication of one's future condition and needs." *Id.* The Court

held that the plaintiff's notice was sufficient under Section 3145(1). *Id.*

By using the phrase "notice of injury" instead of requiring a person to individually identify every injury, the Legislature intended to avoid the problem of not providing coverage for injuries that are initially undiagnosed. A requirement that a person give notice of every possible injury they sustained in a motor vehicle accident would require that person to speculate about their medical condition and foresee conditions that even medical providers could not discern from their symptoms and testing. This Court should **not** add in a requirement that the claimant indicate the *specific* injury sustained. It would be unnecessarily prohibitive to various claimants who require payment for treatments, and goes beyond what the statute actually requires.

III. The Legislature's use of the phrases "notice of injury," "ordinary language," and "nature of his injury" differs from the plain language of other statutory schemes, where the Legislature has required more specificity with respect to notice.

It is a well-accepted principle of statutory construction that when the Legislature places language in one statute, and omits that language or uses different language in another statute, the Legislature intended the omission or change in language. *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210; 501 NW2d 76 (1993) ("Courts cannot assume that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, apply what is not there."); *Raselli v J A Utley Co*, 286 Mich 638, 643; 282 NW 849 (1938) ("This court cannot write into the statutes provisions that the legislature has not seen fit to enact."). In accordance with this principle, this Court has noted the contrast between the use of broad language

in one statute and specific language in another.

For example, in *People v Harris*, 499 Mich 332, 343; 885 NW2d 832 (2016), this Court construed the Disclosures by Law Enforcement Officers Act, which prohibited the prosecutor's use of "any information" derived from an involuntary statement in a criminal proceeding. The question was whether "any information" meant only truthful information. *Id.* at 345-346. The Legislature's use of the term "any information" directly contrasted with its use of the term "truthful information" in other statutes, such as MCL 780.702(3), MCL 750.157, and MCL 750.453. *Id.* at 345-346, 349-351. This Court concluded that the Legislature intended "any information" to encompass both true and false information. *Id.* at 352-353.

Here, the notice provision of MCL 500.3145(1) of the No-Fault Act may be contrasted with the notice provisions in other statutes, such as the highway exception to governmental immunity and the notice of intent required in medical malpractice cases. MCL 691.1404(1), the highway exception, provides,

> As a condition to any recovery for injuries sustained by reason of any defective highway, the injured person, within 120 days from the time the injury occurred, except as otherwise provided in subsection (3) shall serve a notice on the governmental agency of the occurrence of the injury and the defect. The notice shall **specify** the **exact location** and nature of the defect, **the injury sustained** and the names of the witnesses known at the time by the claimant.

MCL 691.1404(1) (emphasis added). MCL 500.3145(1), on the other hand, merely requires the claimant to "**indicate in ordinary language** the name of the person injured and the time, place and **nature of his injury**." MCL 500.3145(1) (emphasis added).

In the highway exception, the Legislature requires notice of "*the* injury sustained,"

not merely "notice of injury," as required by MCL 500.3145(1). *Compare* MCL 500.3145(1) *with* MCL 691.1404(1) (emphasis added). The highway exception provision further requires the "*exact* location." MCL 691.1404(1) (emphasis added). The Legislature, in the highway exception, does **not** limit information about *the* injury to simply its "nature," nor does it endeavour to clarify that "ordinary language" is all that is needed. Instead, it requires the individual to "specify" *the* injury sustained. *Id.* The contrast between the notice provision of the highway exception and the No-Fault notice provision at issue in this case indicates the Legislature's intent to make the No-Fault notice provision simple, general, and easy to satisfy. The use of the phrase "indicate in ordinary language" instead of the word "specify" demonstrates a legislative intent to require only **general** information, not specificity. In fact, Section 3145(1) of the No-Fault Act is the only Michigan statute to employ the term "ordinary language."

Another counter example arises from the medical malpractice arena. The Legislature chose to require a notice of intent to be filed containing all of the following:

> (a) The factual basis for the claim.
>
> (b) The applicable standard of practice or care alleged by the claimant.
>
> (c) The manner in which it is claimed that the applicable standard of practice or care was breached by the health professional or health facility.
>
> (d) The alleged action that should have been taken to achieve compliance with the alleged standard of practice or care.
>
> (e) The manner in which it is alleged the breach of the standard of practice or care was the proximate cause of the injury claimed in the notice.

> (f) The names of all health professionals and health facilities the claimant is notifying under this section in relation to the claim.

MCL 600.2912b(4). The statute requires far more information than the No-Fault Act, specifically listing six separate categories of information required, each of which necessitates more detail than requirements such as name, address, time, place, and "nature of injury." *Compare* MCL 600.2912b(4) *with* MCL 500.3145(1). Moreover, there is no qualification that the notice need only be "in ordinary language." *Compare* MCL 600.2912b(4) *with* MCL 500.3145(1). If the Legislature wanted to require more detail in the No-Fault Act, it would have done so explicitly, as it has done in other statutes.

CONCLUSION

The Legislature intended to make compliance with the notice provision of MCL 500.3145(1) easy for claimants who lack counsel and are attempting to efficiently obtain benefits from their insurer. To that end, the Legislature required the claimant only to "indicate in ordinary language" the "nature of his injury," without specificity. The Legislature knows how to draft notice provisions requiring more specific information, such as the highway exception to governmental immunity and the notice of intent for medical malpractice cases, but chose not to in the No-Fault Act. The Legislature intended for claimants to be able to recover for their injuries even if they lacked knowledge of all of the details at the time of notifying their insurer. This Court should not add a requirement of specificity that the Legislature did not write into the statute.

RELIEF REQUESTED

Amicus Curiae Coalition Protecting Auto No-Fault respectfully requests that this Court affirm the decision of the Court of Appeals.

Respectfully submitted,

Date: April 21, 2017

/s/ Liisa R. Speaker
Liisa R. Speaker (P65728)
Jennifer M. Alberts (P80127)
SPEAKER LAW FIRM, PLLC
230 N. Sycamore Street
Lansing, MI 48933

George T. Sinas (P25643)
SINAS DRAMIS BRAKE BOUGHTON & MCINTYRE PC
3380 Pinetree Rd
Lansing, MI 48911